

## Proposed Additions to List of Excluded Areas

- **Lands proposed to be protected in current wilderness bills** – 3 bills are currently pending: Boxer Statewide Wilderness Bill (S. 493), Sequoia Kings Canyon Wilderness Bill (HR 3682) and the Riverside County Wilderness Bill (H.R. 3682). Areas qualify for wilderness designation if they have no roads, the "hand of man" is not visible, and they provide outstanding opportunities for visitors to experience solitude, natural quiet, and "wildness." The Sequoia Kings Canyon bill is mostly additions to national park wilderness, so the lands are already excluded.
- **National Wildlife Refuges** - The U.S. Fish and Wildlife Service manages the National Wildlife Refuge System. In accordance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd-668ee), the Secretary may permit the use or grant an easement in, over, across, upon, through, or under any areas within the System, whenever determined that such uses are "compatible with the purposes for which these areas are established. These are to: (1) maintain biological integrity, diversity, and environmental health of the refuge system and (2) facilitate compatible wildlife-dependent recreation." There are a total of 51 National Wildlife Refuges and Wildlife Management Areas covering 2.3 million acres in CA, NV and the Klamath Basin of Oregon, but it appears that few of them would potentially be affected by RETI. See Map: <http://www.fws.gov/cno/refuges/planning/index.cfm>
- **Areas of critical environmental concern** – designated by BLM to protect and prevent irreparable damage to "important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards." Federal Land Policy and Management Act of 1976, § 103(a). Designation typically takes place during the land use planning process for a larger BLM-administered area and involves environmental review and public participation. 145 such areas have been designated by BLM on the 15.2 million acres that it administers in CA.
- **Designated critical habitats for federally listed endangered and threatened species** – species are put on the federal list by the US Fish and Wildlife Service following its determination that they are either deemed to be in danger of extinction throughout all or a portion of their ranges ("endangered") or likely to become endangered in the foreseeable future ("threatened") according to criteria established by Congress, including impacts to habitat, overuse by humans, and disease or predation, 16 U.S.C. § 1533(a)(1), and more detailed regulatory criteria adopted by the agency, see 50 CFR § 424.14(b)(2). The designation process starts with a petition from either an agency or a member of the public and involves review and comment by the public, state and local governments and others. Designation is made solely on scientific grounds, without consideration of economic impacts. Critical habitat designations are areas "essential to the conservation of the species" and are based upon the "best scientific data available," 16 U.S.C. § 1533(b)(2), but economic impacts are taken into account. Around 80 critical habitats have been finally designated in CA, including habitats for fish.
- **Special wildlife management areas in West Mojave** – the West Mojave Resource Management Plan – adopted following completion of an environmental impact statement and public participation – established Desert Wildlife Management Areas (DWMAs) and Mojave Ground Squirrel Conservation Areas with rigorous protections. In particular, the plan makes both kinds of areas subject to a 1% cap on surface disturbance. See West Mojave Final Environmental Impact Statement, Chapter 4, p. 4-21 (2d paragraph), p. 4-45 (3<sup>rd</sup> paragraph) (both cites to DWMAs), and p. 4-153, Table 4-49 (1<sup>st</sup> box) (ground squirrel). The cap in the ground squirrel areas is applicable to

federal land only, the cap in the former areas applies to lands managed by participating jurisdictions.

- **Conservation reserves designated in Habitat Conservation Plans** – these binding plans are required under the federal Endangered Species Act in order to obtain an “incidental take permit” when non-federal activities will result in the “take” of listed wildlife species. The purpose of the habitat conservation planning process is to ensure that there is adequate minimizing and mitigating of the “incidental take” of the species involved. While early plans were typically project specific, more recent plans are broad-based, landscape level plans utilized to achieve long-term biological and regulatory goals. Once the plan and the permit are approved, private property owners (and other non-federal actors) can proceed with actions that would otherwise result in the illegal take of species. Environmental analysis and public participation is required (except for plans with “minor effects” on listed, proposed or candidate species and their habitats). Participating landowners receive a “no surprises” commitment from the Fish and Wildlife Service, assuring them that if “unforeseen circumstances” arise, they will not need to make additional commitments of money or land, or face additional restrictions.
- **Conservation reserves designated under Natural Community Conservation Plans** – these plans are developed under California state law. Each plan “identifies and provides for the regional or area-wide protection of plants, animals, and their habitats while allowing compatible and appropriate economic activity.” CA Dep’t of Fish and Game. 2008. “The program seeks to anticipate and prevent the controversies and gridlock caused by species’ listings by focusing on the long-term stability of wildlife and plant communities and including key interests in the process.” Id. There are 32 active NCCPs covering more than 7 million acres of which 11 have been approved and permitted. Id.
- **Private conservation areas** – private land areas that are managed for public benefit. Examples include the six preserves managed by The Wildlands Conservancy in CA. See [http://www.wildlandsconservancy.org/twc\\_preserve.html](http://www.wildlandsconservancy.org/twc_preserve.html). These are not the same as lands managed under a conservation easement.
- **Existing conservation and mitigation banks that have been approved by the state Department of Fish and Game, U.S. Fish and Wildlife Service or Army Corps of Engineers** – former areas generally protect endangered and threatened species; latter are specifically for wetland restoration, creation and enhancement. Latter are undertaken to compensate for unavoidable wetland losses.
- **Lands purchased with private funds and donated to the federal government** – the principal concern here are some 272,000 acres of former railroad lands in the Mojave Desert purchased by The Wildlands Conservancy with private dollars and donated to BLM between 1999 and 2004. Another 315,000 acres that were donated are in parks or wilderness areas.